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PATENTS
BER-002

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : William Berson
Application No. : 10/824,975 Confirmation No. : 7527
Filed : April 14, 2004
For : LABEL FOR RECEIVING INDICIA HAVING
VARIABLE SPECTRAL EMISSIVITY VALUES
Art Unit : 3722
Examiner : Dana Ross

Mail Stop RCE New York, New York 10036
Commissioner for Patents February 29, 2008
P.O. Box 1450
Alexandria, Virginia 22313-1450

SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT

Sir:

Pursuant to 37 C.F.R. §§ 1.56 and 1.97, applicant hereby makes the following documents of record in the above-identified patent application:

U.S. Patent Documents

Fan	4,312,915	01/26/1982
Hinks et al.	4,625,101	11/25/1986
Burrows	4,627,819	12/09/1986
Maruyama et al.	5,686,725	11/11/1997
Urano et al.	6,471,126	10/29/2002
Cameron et al.	6,685,094	02/03/2004
Urano et al.	6,712,272	03/30/2004
Urano et al.	6,857,573	02/22/2005
Ker et al.	7,038,276	05/02/2006
Kerns et al.	7,038,766	05/02/2006
McInerney et al.	7,079,230	07/18/2006

Foreign Patent Documents

Japan JP 9-161002 06/20/1997

Non-Patent Documents

"Application Note Radiometric Temperature: Concepts and Solutions," Santa Barbara Infrared, Inc, 30 South Calle Cesar Chavez, Suite D, Santa Barbara, CA, www.SBIR.com

Shulman, David, "An Annotated Bibliography of Cryptography," New York, London: Garland Publishing Co., pp. 6-13

Wilkins, John, "Mercury, or the Secret and Swift Messenger," Kessinger Publishing, Chapter V, pp. 37-41

The aforementioned documents are listed on the accompanying Form PTO/SB/08 (submitted in duplicate). Pursuant to 37 C.F.R. § 1.98(a)(2)(ii), copies of the aforementioned U.S. Patent Documents are not enclosed herewith. Copies of the aforementioned foreign document and non-patent documents are provided herewith.

Applicant would like to bring to the attention of the Examiner that the first non-patent literature document listed above, entitled "Application Note Radiometric Temperature: Concepts and Solutions," included a clerical error as it was cited in the IDS filed on December 13, 2004 (the "December 2004 IDS"). In particular, the December 13, 2004 IDS indicated that the author was "Cesar Chavez." "Cesar Chavez," however, is part of the address of Santa Barbara Infrared, Inc. The citation is corrected herein and on the Form PTO/SB/08 enclosed herewith.

Applicant also notes for the record that each of the three non-patent documents listed above were previously cited in the December 2004 IDS. A copy of each reference was also provided to the USPTO with the December 2004 IDS and was listed on the PTO/SB/08a enclosed therewith. On April 26, 2007, Examiner Ross initialled the PTO/SB/08a, indicating that each of the references was considered as to the merits.

However, on December 13, 2007, Examiner Ross mailed a Notice of Allowance that included the following remarks: "[some of the] Non-Patent references cited by Applicant on the IDS dated 13 December 2004 which do not include a date have been placed in the application file, but the information referred to therein has not been considered as to the merits" (Notice of Allowability, page 2). Applicant respectfully submits that the Examiner cannot withdraw the fact that she has already considered the references as to the merits. The Examiner cites MPEP § 609.05 as support for withdrawing consideration, but MPEP § 609.05 only states that references do not need to be considered when a publication date is not provided to the USPTO by applicant. But the Examiner did in fact consider these references and MPEP § 609.05 never authorizes the Examiner to withdraw consideration, nor does that seem possible in the same manner that a ringing of a bell cannot be undone.

Moreover, the references can still be considered without the date being listed in the IDS or PTO/SB/08a. For example, the same references (that the Examiner withdrew consideration of in this case) were considered in connection with other U.S. Patents invented by applicant


without a date being listed. See, for example, U.S. Patent Nos. 7,044,386 and 7,267,285.

Therefore, applicant respectfully requests that the Examiner initial and return a copy of the enclosed Form PTO/SB/08, thereby indicating that the Examiner considered the information contained in the references cited herein and causing the references to be printed on any patent that may issue on this application.

Applicant reserves the right to establish the patentability of the claimed invention over any of the information provided herewith, and/or to prove that this information may not be prior art, and/or to prove that this information may not be enabling for the teachings purportedly offered.

Consideration of the foregoing in relation to this patent application is respectfully requested.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Adam M. Kaplan", is written over a horizontal line.

Adam M. Kaplan
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